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FACSIMILE COVER SHEET FROM FACSIMILE NUMBER: (801)521-9639

Date: January 25, 2002 **Time:** _____
To: U. S. District Court, District of Columbia
Attention: Honorable Colleen Kollar-Kotally
Facsimile No.: 202-307-1454
Verification No.:
Client No.:
From: Thomas J. Rossa
Message: Re: Microsoft Settlement

Number of Pages Following this Cover Sheet: 2

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Holme Roberts & Owen LLP



January 25, 2002

SENT VIA:

☐ E-MAIL TO: Microsoft.atr@usdoj.gov☒ VIA FACSIMILE COPY TO: (202) 307-1454 or (202) 616-9937☐ 1ST CLASS MAIL TO:

The Honorable Colleen Kollar-Kotelly
U.S. District Court, District of Columbia

c/o Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW, Suite 1200
Washington, D.C. 20530-0001

Thomas J. Rossa
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Re: Microsoft Settlement

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Dear Judge Kollar-Kotelly:

As a practicing attorney in the intellectual property area for nearly 30 years, I write to object to the proposed settlement in the *Microsoft v. DOJ* case. While comment from the public or the bar is typically inappropriate, in this case the involvement of press suggests that it would seem highly appropriate that comments be supplied in reference to the proposed arrangement.

My purpose in writing is not to comment on the correctness of the decision but the application of the proper remedy. I must assume that the district court correctly determined and the Court of Appeals correctly reviewed the determination that Microsoft violated the antitrust laws of the United States. The U.S. Supreme Court has determined not to hear an appeal of the Court of Appeals decision, therefore, Microsoft's legal remedies to challenge the trial court's findings are at an end. What remains is the Court of Appeals' remand to the district court to determine how Microsoft should be punished for its violations.

I understand that with a change in the administration, the DOJ's desire to continue with the litigation has somewhat waned and that a settlement has been proposed that DOJ finds acceptable. In my experience and understanding, however, the determination that a monopoly exists and findings of antitrust

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Holme Roberts & Owen LLP

The Honorable Colleen Kollar-Kotelly

January 25, 2002

Page 2

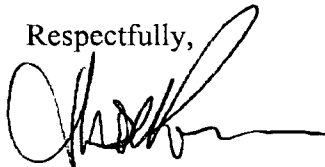
violations require the imposition of remedies that follow certain logical principles. Specifically the remedy or disposition should lead to a termination of the monopolistic activities. In addition there should be some structure to level the playing field and allow those who have been disadvantaged to reenter the market place. Indeed, logic supports tilting that playing field toward the excluded for a time to dissipate the advantage unfairly and illegally obtained by the monopolizer.. Of course there should be some penalty for past conduct and something to prevent or deter future violations. I am at a loss to explain how the proposed settlement satisfies the requirements of these principles and how it complies with the standards set forth in the Court of Appeals' decision.

Anytime a company's dominance in the marketplace and behavior reaches the levels of a monopoly as has been determined in this case, affirmative action must be taken to bring the marketplace into balance. The proposed settlement does not do so, and I suggest the court take evidence from others not party to the proceedings to develop proper and appropriate remedies.

While there are experts who are better positioned to opine on the details, it seems entirely logical for sufficient portions of the programs including the source code to be made available so that others are able to access and develop compatible systems. There is some similar precedent for such because in the early 70's the Bell system was forced to allow others to access the Bell system through interface circuitry. Thus Bell's monopoly over the PBX systems ended.

While Microsoft is not a utility, it dominates the industry to the point that it is tantamount to a utility. In turn, remedies that are somewhat regulatory would be logical if not compelling. Indeed, some continuing court supervision after the remedy has been fashioned would seem to be as important as court supervision of bussing to effect integration.

Respectfully,



Thomas J. Rossa

cc: The Honorable Mark Shurtleff, Utah Attorney General

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